

# Scotland would benefit from adopting a more ambitious approach to its constitutional future

By Democratic Audit

*The Scottish Government this week released the first draft of an interim constitution for an independent Scotland, as well as details about the nature of the Constitutional Convention that would come together in order to write a final document. **Alan Renwick** argues that though some elements of this are encouraging, a bolder approach – particularly in terms of convention membership, and the clarity of the document as a whole – would be preferable.*



Glasgow's Kelvingrove museum (Credit: <p&p>, CC BY NC ND 2.0)

The Scottish Government has this week [set out its plans](#) for Scotland's constitutional future in the event of a Yes vote in September's independence referendum. Those plans come in three parts: an interim constitution to take effect on the day Scotland becomes an independent country; a procedure for drawing up a permanent constitution; and some ideas on what the permanent constitution might contain. Many of the proposals are sensible. But they also evince a disappointing lack of ambition. If our democracy is to escape its current despond, more innovative thinking is badly needed.

## An interim constitution

The essence of the interim constitution is 'steady as she goes'. The Queen will remain head of state (though she will be plain old 'Elizabeth', rather than 'Elizabeth the Second'). The parliamentary form of democracy will stay, centred around an unchanged Scottish Parliament elected by an unchanged voting system; the Scottish Government will be just as it is today as well. There will be a commitment to nuclear disarmament (which will please the SNP troops) and a strong emphasis on the principle of equality (which will help Alex Salmond and his colleagues argue that an independent Scotland will respect Scots' egalitarian instincts more than a country ruled from Westminster). But neither of these – indeed, no part of the interim constitution – will be formally entrenched. Democrats should be worried by proposals to strengthen judicial review: judges will have an American-style power to strike down legislation rather than a UK-style power to make Parliament think again. But the practical effect of this change is fairly limited.

For the most part, then, the interim constitution would leave Scotland's internal political system mostly just as it is. This aspect of the document's conservatism is actually quite sensible: an interim constitution is not the place for major innovations. It is also politically wise: most referendums are lost because of voters' fear of change; so minimizing change is astute if referendum Yes campaigners want to advance their goal.

### **A constitutional convention**

The Scottish Government proposes that the task of drawing up Scotland's permanent constitution should be given to a Constitutional Convention:

the permanent written constitution for an independent Scotland can be drafted, not by the current or any future Government, nor by elected politicians, but through an inclusive and widely participative process involving many civic society groups such as trades unions, business interests, local councils, faith groups, community groups and – importantly – also extensively involving ordinary citizens. The current Scottish Government will be just one voice amongst many in this process. ... It will be open to all groups, and also individual citizens of an independent Scotland, to make proposals for the constitution that the independent Convention will consider and upon which it will decide.

The idea that a constitutional convention should be created and that this should comprise more than just politicians is very good. The idea that wider participation is best achieved through civil society groups is not. Who will decide which groups are to be included, on what basis? What of those citizens who are generally not well integrated into such groups, such as the unemployed and the young? The Scottish Constitutional Convention, which drew up plans for devolution in the 1980s and 90s, included civil society representatives, and the model therefore has some traction in Scotland. But even the group that devised that Convention saw this arrangement as a second-best option forced on it by circumstance. If Scottish nationalists want to build a better form of democracy in Scotland, something more ambitious than this is needed.

One alternative would be direct election, but this has many difficulties too and risks turning the convention into just another talking shop for politicians.

As I have argued [elsewhere](#), the best form for a constitutional convention would be based on the idea of a citizens assembly comprising randomly selected citizens, but also including some politicians to ensure they buy into the process. Such a model has been followed by the recent Irish Constitutional Convention, and the Irish experience shows that it can deliver high-quality deliberation that includes ordinary people directly and leads to well reasoned conclusions. Qualms about whether randomly chosen voters will be up to the task of debating complex constitutional matters have no foundation.

The excerpt from the consultation paper above does mention 'ordinary citizens', so hopefully the Scottish Government has an element of random selection in mind. But this should be the means by which the majority of members are chosen. Civil society representatives and experts should be involved in the Convention as witnesses, not as members.

### **Ideas for the permanent constitution**

Finally, the consultation paper presents some ideas as to what a permanent constitution might contain. These ideas are sketchy, and it is reasonable that they are so: the Constitutional Convention should be free to conduct its own deliberations and make its own decisions.

Still, it is disappointing not to find more ambition in the Scottish Government's sketches. There are words about the rights that might be included, thoughts on national languages, and suggestions about the inclusion of a preamble. But there is no hint that the SNP has any aspirations to meaningful constitutional innovation. Yet public confidence in traditional democratic institutions is, quite reasonably, at rock bottom and here we have a 'constitutional moment' in which it might be possible to take bold action to address that. Why are there no ideas, for example, about citizen-initiated referendums? Why are there no suggestions that Scotland could become the first modern state to take the idea of deliberative citizens' assemblies seriously as a cornerstone of the democratic process?

The Scottish Government likes to talk about a new, more open democracy. But this document gives no indication that it has any intention of delivering the goods.

Of course, no other party has done that either. But it is high time they did. If the pro-Union parties want to seize the initiative, the SNP has given them the perfect opportunity to do so by setting out their own plans for the renewal of Scotland's place within the Union. Those plans should place a citizens' assembly at the heart of the constitutional reform process. And they should indicate a desire to think big about the ways in which democratic governance in these islands might be changed for the better.

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